IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1311 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MAFAJI @ MUPARAM @ MAFO MARVADI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 1311 of 2004

MR HR PRAJAPATI for Petitioner No. 1

MR MR PRAJAPATI for Petitioner No. 1

Ms Mita Panchal, AGP for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 06/05/2004

ORAL JUDGEMENT

The petitioner has filed this petition under under Article 226 of the Constitution of India for

appropriate writ, order or direction for quashing and setting aside an order dated 5.12.2003 passed by respondent No.2 under section 3(2) of the Gujarat Prevention of Anti-social Activities At, 1985 (for short, 'the PASA Act') directing detention of the present petitioner on the grounds stated in the detention order.

2. It was alleged against the petitioner that five FIRs were registered against the petitioner between 31.10.2002 and 17.10.2003 as per the details stated in the grounds of detention at pages 20 and 21. It is also alleged against the petitioner that two witnesses have rendered statements against the petitioner that the petitioner is a head strong person and on 21.10.2003 as well as on 5.11.2003, he had quarrelled with so many persons on account of which public order was prejudicially affected. On the strength of the aforesaid registered offences and unregistered cases, the petitioner was found to be a bootlegger and with a view to prevent him from carrying on his bootlegging activities amounting to a threat to public order, the petitioner was ordered to be detained by the impugned order of detention. The petitioner has challenged the order of detention on several grounds. It has been contended that the petitioner was in judicial custody in three of the five offences registered against him. That this aspect was not properly considered and that there was no immediate need to detain the petitioner when he was in judicial custody. It has been contended that power under section 9(2) of the Act was not properly exercised by the detaining authority. That certain documents were not legible and, therefore, the petitioner could not submit effective representation against the detention. That the representation was not considered and disposed of within a reasonable time. Therefore, the detention is illegal and deserves to be quashed and set aside.

3. On receiving the petition, rule was issued and in response to the service of notice of rule, Ms Mita Panchal, learned AGP appears for the respondents. I have heard the learned Advocates for the parties and have perused the papers.

4. At the final hearing, learned AGP has produced an affidavit of the detaining authority. It is taken on record.

5. Learned Advocate for the petitioner has argued that the petitioner was in judicial custody in three of the five offences registered against him. In the

remaining two offences, he was not arrested. That the petitioner had not submitted any application for bail and yet the detaining authority has observed at the bottom of the grounds of detention at page 23 that in one of the offences, the petitioner was on remand to the police custody and on completion of the period of police remand, the petitioner will be presented to the Court and in all the offences in which the petitioner was arrested, the petitioner would apply for bail and get himself bailed out and thereafter he would continue to indulge in anti-social activities and, therefore he was required to be detained.

6. Learned Advocate for the petitioner has contended that there was no material before the detaining authority to show that the petitioner would apply for bail and thereafter he would get himself bailed out, that this aspect was not properly appreciated by the detaining authority and, therefore, the impugned order of detention is not legal and valid. In support of the said contention, learned Advocate for the petitioner has relied upon a decision of the Hon'ble Supreme Court in the case of Amritlal v. Union of India, reported in AIR 2000 SC 3675. There the Supreme Court referred the above situation in paras 6 and 7. They are reproduced for ready reference hereunder:

> "6. The requirement as notice above in Binod Singh's case (AIR 1986 SC 2090) that there is "likelihood of the petitioners being released on bail" that however is not available in the reasonings as provided by the concerned officer. The reasonings available is the 'likelihood' of his moving an application for bail' which is different from 'likelihood to be released on bail'. The reasoning, in our view, is not sufficient compliance with the requirements as laid down.
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> "7. The emphasis however, in Binod Singh's case (supra) that before passing the detention order the concerned authority must satisfy himself of the likelihood of the petitioner being released on bail and that satisfaction ought to be reached on cogent material. Available cogent material is the likelihood of having a bail application moved in the matter but not obtaining a bail order."

7. In the present case also the petitioner was yet in police custody and the Investigating police officer was still in a position to apply for extending the period

of police custody. There was no question for the petitioner to apply for bail and to get himself bailed out. The petitioner had not even applied for bail as aforesaid even in two other cases also. In that view of the matter, the facts of the case on hand appear to be similar to the facts of the aforesaid decision of the Hon'ble Supreme Court. The Supreme Court has further observed that even for observing as aforesaid by the judicial authority, there must be cogent material to show that the petitioner was likely to apply for bail and would get himself bailed out and, thereafter, he would continue the aforesaid anti-social activities. In the present case we find that except the aforesaid observations, the detaining authority had no further material with him in order to observe that the petitioner would apply for bail and he would get himself bailed out. In above view of the matter, the aforesaid decision will squarely apply to the facts of the case on hand and consequently, the order of detention is required to be quashed on this solitary ground. In that view of the matter, learned Advocate for the petitioner states that the matter may not be decided on the remaining grounds.

8. For the foregoing reasons, this petition is allowed. The impugned order dated 5.12.2003 passed by respondent No.2 is ordered to be quashed and set aside. The detenu is ordered to be set at liberty forthwith, if no longer required in any other case. Rule is made absolute to the aforesaid extent. No order as to costs. D.S. permitted.

[D P Buch, J.]
msp